IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. 1217 of 2006.

Date of Decision: 23-3-2007.

Hardwari Lal. Petitioner.

Versus

State of H.P. and others. Respondents.

Coram

Hon'ble Mr. Justice Deepak Gupta, J
Hon'ble Mr. Justice S. S. Thakur , J.

Whether approved for reporting[1]?

For the petitioner : **Mr. Ajay Sharma, Advocate.**

For the respondents 1 to 2: **Mr. M.S. Chandel, Advocate General with Mr. J.S. Guleria, Law Officer.**

For the respondents 3 to 5: **Mr. N.K. Thakur, Advocate.**

PER SURINDER SINGH , J. (oral)

In this writ petition, the petitioner has mainly sought the following relief:

> "i) *That case No. 66/2006 filed by respondents No.3 to 5 against the present petitioner and 104/2006 as filed by present petitioner and pending before respondent No.2 which now stand listed on 28.11.2006 for final arguments may very kindly be withdrawn from him and the same may be assigned to any other office for decision in accordance with law and to secure the ends of law and justice….."*

The above prayer has been made by the petitioner herein, firstly, on the ground that the respondent No.2 took up the revision petition No. 104 of 2006 filed by the respondent No.3 to 5, for arguments on 31-10-

[1] Whether reporters of the Local papers are allowed to see the judgment?

2006, the counsel for the petitioner in this petition made the request to take it with the connected petition No. 66 of 2006. The respondent No. 2 is alleged to have passed some derogatory remarks and also that he was bent upon to decide the matter on the same day. It was, however, after a great persuation that the case was adjourned for the next date. Secondly, that on 27-11-2006, the respondent No.2 remarked that there was nothing in the revision petition filed by the petitioner but the counsel prayed for a date as he was to attend the oath ceremony of Judges in the High Court, but the respondent No.2 again blamed the petitioner for causing delay and harassing respondent No.3 to 5 and gave an impression of his total bias. Though he adjourned the case, but fixed next day, i.e, 28-11-2006. It is alleged that both the revision petitions were also not consolidated despite requests. The respondent No.2 was acting in a undue haste to decide the matter, whereas, other old cases were pending before him since long. By the above conduct, the petitioner got apprehension that he would not get justice and filed the present petition with the above prayer.

The matter came up before this Court on 6-12-2006 on which date, the notices were ordered to be issued to the respondents returnable within six weeks, reply was ordered to be filed within four weeks. In CMP No. 1860 of 2006, notice was also ordered to be issued in the aforesaid terms, in the meanwhile, further proceedings in cases No. 66 of 2006 and 104 of 2006 pending before the respondent No.2 were ordered to be stayed. Thereafter, the matter was listed on 15.3.2007 before this Court. After perusing the reply of respondents No.1 and 2 and hearing the counsel for the petitioner, this Court passed the following order:

> "15-3-2007: Present: Mr. Ajay Sharma, counsel for the Petitioner.
>
> Mr. J.S. Guleria, Law Officer, for

Respondents 1 and 2.

Mr.N.K. Thakur, counsel for
Respondents 3 to 5.

It has been stated by the respondents in the affidavit that the case in question was listed on 25th September, 18th October, 31st October, 27th November and 28th November, 2006. Respondent No.2 is directed to file his affidavit and along with the affidavit, he shall produce a copy of the cause list of the respective dates showing the cases fixed on these days as well as the name of the cases and also indicate what was the next date given in the other cases. The entire record shall also be produced on the next date.

List on 23rd March, 2007. In the meantime, the petitioner, if so desire, may file rejoinder…"

Consequent upon the aforesaid order, in compliance the respondent No.2, filed his affidavit along with the copies of the cause list of various dates as mentioned in para 1 of his affidavit dated 20.3.2007. No rejoinder to the reply was filed by the petitioner and the matter was finally heard.

The allegations contained in the petition were specifically denied by the respondent No.2 in his reply and he has explained the manner in which the proceedings were conducted before him. Precisely, he contended that the revision filed by the respondents No.3 to 5 against the petitioner was instituted on 1.8.2006, interim stay was granted and notice was issued to the respondent and the case was adjourned for 25.9.2006 on which date, the parties put in appearance and it was adjourned for 18.10.2006 for arguments. Shri Naresh Thakur, counsel for respondents No.3 to 5 and Shri Surinder Saklani vice Shri Ajay Sharma, counsel for the petitioner appeared and the case was again adjourned for 31.10.2006 on the request of the counsel for the petitioner herein. Again on 31.10.2006, the counsel for the parties appeared. The

counsel for the petitioner had made a request to fix the case No. 66 of 2006 with case No. 104 of 2006 which was already fixed for 27.11.2006, the request was accepted. On 27.11.2006, Shri Surinder Saklani Advocate vice Counsel Shri Ajay Sharma, counsel for the petitioner, sought adjournment to prepare arguments. The case was adjourned for 28.11.2006. On 28.11.2006, both the above cases were taken up but Sheela Devi respondent, one of the petitioner in the case, sought short adjournment for arguments on the same day afternoon as her counsel was busy in the High Court, which was allowed and both the cases were taken at 2.30 P.M, at that time neither the petitioner nor his counsel were present. On this, Smt. Sheela Devi aforesaid, made a request that she being an old lady, cannot afford to visit Shimla and the above cases be taken up at Una, which is nearer to her native place. The request was allowed and the cases were ordered to be taken up on 8.12.2006 for arguments on which date, both the parties along with their counsel were present but the respondent No.2 was informed about the stay passed in this petition by this Court.

The respondent No.2 has categorically denied the allegations made against him and pleaded that there was no bias against any of the parties. However, according to him, the petitioner has chosen a very low method for seeking transfer of the matter while the same could have been sought by him in a just and fair manner for which the replying respondent had no objection.

We have heard the counsel for the parties in detail and have examined the record. While hearing the parties, this Court was given an impression that the respondent No.2 actuated with bias was in undue haste to decide the cases of the parties whereas, other old cases were pending since long before the respondent No.2, this made us to pass the

order dated 15.3.2007 above. But on the perusal of the cause lists filed with the affidavit aforesaid, we did not find any substance in the allegations nor there was anything to show that the cases of the parties were taken up by the respondent No.2 in an undue haste. As a matter of fact on the other hand, we have found that the respondent No.2 had been consistent in dealing with all other matters before him in a similar way as that of the parties to the petition herein. He had accommodated the petitioner to the maximum which was legally permissible. Even he had taken up both the cases of the parties on 28.11.2007 which further goes against the contention of the petitioner as stated above.

Therefore, on the perusal of the record our conclusion is that the apprehension of bias in the mind of the petitioner is absolutely unrealistic and unreasonable. Accordingly, we dismiss the petition. Consequently the interim order issued on 6.12.2006 stands vacated.

The parties are directed to be present before the respondent No.2 on May 16, 2007 and it is further directed that the respondent No.2 shall dispose of the matter inter-se the parties at the earliest, on merits.

CMP No. 1890 of 2006.

No order in view of the disposal of the main petition.

(Deepak Gupta), J.

(Surinder Singh), J.

March 23, 2007
(BM)